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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,137	04/13/2004	Craig D. Quarberg	20040030.ORI	4527
23595	7590	04/19/2006	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			LUGO, CARLOS	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/823,137

Applicant(s)

QUARBERG, CRAIG D.

Examiner

Carlos Lugo

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on February 23, 2006.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 8,9,11-15 and 17-19 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,313,505 to Petrie in view of US Pat No 4,971,374 to Lovell et al (Lovell '374).

Regarding claims 8 and 14, Petrie discloses a brace comprising plurality of pole members (15) that includes upper and lower ends; a block member (11 and 24) having a top planar surface (at 36) with a yoke (34) extending upwardly from the top planar surface and a cylindrical stem (32) extending upwardly from the top surface and fitting into a circular opening (Figure 2) in the bottom of the yoke.

However, Petrie fails to disclose that the lower ends of the pole member have a foot member.

Lovell '374 teaches that it is well known in the art at the time the invention was made to provide a foot member (78) to the lower end of a pole (60).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device described by Petrie with a foot member, as taught by Lovell '374, so as to prevent from slippery or to stabilize the device.

As to claim 9, Petrie fails to disclose that each pole member includes first and second telescopically segments.

Lovell '374 teaches that it is well known in the art to provide a brace that includes a pole member with first and second telescopically segments (60 and 62).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pole members described by Petrie with telescopically segments, as taught by Lovell '374, in order to provide the pole members at a desire height.

As to claim 11 and 17, Petrie, as modified by Lovell '374, teaches that the foot member includes a non-skid floor-engaging surface (90).

As to claim 12 and 18, Petrie, as modified by Lovell '374, teaches that the skid surface is an elastomeric pad.

As to claim 13 and 19, Petrie, as modified by Lovell '374, teaches that the non-skid surface includes a plurality of dominantly projecting corrugations (92).

4. **Claims 10 and 16 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,313,505 to Petrie in view of US Pat No 4,971,374 to Lovell et al (Lovell '374), as applied to claims 8 and 14 above, and further in view of US Pat No 2,330,105 to Barrows.

Petrie, as modified by Lovell '374, fails to disclose that the plurality of pole members are connected to the block member by means of introducing the pole member to a circular opening at the block member. Petrie discloses that the pole members (15) are secured to the block member (11) by means of passing a projection into the circular opening of the pole member.

Barrows teaches that it is well known in the art to secure a pole member (23 and 24) to a block member (19) by introducing the pole member into a circular aperture (21) in the bottom surface of the block (19).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to introduce the pole member into an aperture at the block member in order to secure the pole member into the block member, as taught by Barrows, since the reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art.

### ***Response to Arguments***

5. Applicant's arguments filed on February 23, 2006 have been fully considered but they are not persuasive.

The applicant argues that Petrie alone fails to disclose a foot member (Page 5 Line 8), the 102(b) rejection in view of Petrie has been withdrawn. A new 103 rejection to claims 8 and 14 in view of Lovell '374 has been made on the record.

The applicant also argues that Petrie fails to disclose a block member secured to the upper ends of the plurality of poles (Page 5 Line 14).

The applicant recites that a block member is generally understood to be a solid piece of material in the form of a generally rectangular shape. However, the examiner asks the applicant, where is this limitation presented in the claims?

At the instant, the applicant has defined in a block member in the claims as a member secured to the upper ends of the pole members having a top planar surface. Petrie discloses a block member (11 and 24) secured to the upper ends of the pole members and having a top planar surface (at 36). Until the applicant clearly define in the claims the block member, the examiner will give the broadest interpretation possible to the term "block member".

Also, the applicant argues that the yoke member is required to be adapted to receive a shaft running between two doorknobs (Page 6 Line 3).

First, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. At the instant, the yoke described by Petrie is capable of receive a shaft running between two doorknobs.

Second, the invention is directed to a brace, not the combination of the brace with the door.

The recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus, which differentiates it from a prior art reference disclosing the structural limitations of the claim. Also, the applicant is reminded that where there is physical identity between the subject matter of the claims and the prior art, the label given to the

claimed subject matter does not distinguish the invention over the prior art. Therefore, the argument is not persuasive.

Further, the applicant argues that Lovell '374 fails to disclose a block member or a plurality of pole members (Page 6 Line 22). The applicant is reminded that the rejection is in view of Petrie, as modified by Lovell '374. Lovell '374 is only used to demonstrate that it is well known in the art to provide a foot member and that a pole can be telescopically. Therefore, the argument is not persuasive.

Finally, the applicant argues that Barrows fails to disclose a block member or a plurality of pole members (Page 7 Line 5). The applicant is reminded that the rejection is in view of Petrie, as modified by Lovell '374 and further as modified by Barrows. Barrows is only used to demonstrate that it is well known in the art to secure a pole member (23 and 24) to a block member (19) by introducing the pole member into a circular aperture (21) in the bottom surface of the block (19). Therefore, the argument is not persuasive.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3676

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

A handwritten signature in black ink, appearing to be 'CLG' followed by a horizontal line.

Carlos Lugo  
Patent Examiner AU 3676  
April 13, 2006.